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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1165

AMERICAN TRUCKING ASSOCIATIONS, INC., *Appellant*

v.

UNITED STATES OF AMERICA, ET AL., *Appellees*

On Appeal from the United States District Court
for the District of Columbia

MOTION TO AFFIRM

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MOTION TO AFFIRM

Appellees, pursuant to Rule 16(1)(c) of the Rules of the Supreme Court of the United States, move that the final judgment and decree of the District Court be affirmed on the ground that the question is so insubstantial as not to warrant further argument.

STATEMENT

This is a direct appeal from the final judgment and decree entered on October 20, 1975, by a District Court of three judges specially constituted pursuant to 28

U.S.C. §§ 2284 and 2325, dismissing appellant's complaint which sought to set aside a decision and order of Division 3 of the Interstate Commerce Commission. By that order the ICC approved an application granting Smithsons Holdings Limited, a subsidiary of Canadian Pacific Limited, a railroad subject to Part I of the Interstate Commerce Act, authority to acquire the capital stock of Smith Transport (U.S.) Limited, a motor carrier subject to Part II of the Act. The Commission adopted the Initial Decision of its Administrative Law Judge (ALJ) who found that the transaction satisfied the provisions of Section 5 of the Act, 49 U.S.C. § 5, including the proviso of Section 5(2)(b), 49 U.S.C. § 5(2)(b), that the Commission shall not approve the acquisition of control of a motor carrier by a railroad "unless it finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition."

In its district court suit, appellant argued that the ICC's grant of authority is in error for the reason that, as a matter of law, the Commission may approve the acquisition and control of a motor carrier by a railroad or its affiliate only to perform operations which are functionally tied to the railroad's operations. Stated otherwise, appellant argued that the Commission should have restricted the service of Smith Transport (U.S.) to operations "auxiliary to and supplemental of" the railroad operations of Canadian Pacific. Appellant also argued that the Commission erroneously found that the operations sought to be acquired will assist Canadian Pacific in the performance of its railroad operations.

The District Court held that Section 5(2)(b) does not preclude the Commission in "special circumstances" from approving the acquisition of a motor carrier by a railroad without auxiliary and supplemental restrictions, that the Commission's finding of "special circumstances" in this proceeding is clearly supported by substantial evidence, and that the evidence of record also supports the Commission's finding that approval of the transaction is consistent with the public interest, will not unduly restrain competition, and will enable the Canadian Pacific to use such service to public advantage in its operations. (J.S. 8a-10a)

ARGUMENT

The decision of the District Court is correct and should be affirmed. Appellant raises substantially the same allegations of error previously considered and rejected by both the ICC and the District Court, and its appeal raises no substantial questions warranting plenary review by this Court.

1. The Commission is not required in all instances by Section 5(2)(b) to restrict motor carrier authority acquired by a railroad or its affiliate to operations auxiliary to and supplemental of rail operations. Appellant erroneously reads Section 5(2)(b) as absolutely requiring that motor carrier authority acquired by a railroad, or in this instance an affiliate of a railroad, be so functionally limited. Appellant's reading of Section 5(2)(b) is contrary to its legislative history, ICC interpretation and implementation of that section, and approving court decisions.

Congress passed the "Motor Carrier Act, 1935" to end destructive competitive practices among motor car-

riers themselves and in competition with railroads. At the same time, Congress recognized the vast potential of motor carriage and the necessity for its continued development. Congress was also mindful that the railroads by their entrenched position and economic muscle could stifle competition and prevent the development of viable for-hire motor carriage. Accordingly, Congress took steps to protect the infant industry from destruction by other modes by enacting Section 213(a)(1) of the Act. However, though Congress deemed it desirable to protect the fledgling motor carrier industry from railroad domination, its purpose was not absolutely to prohibit railroad entry into the motor carrier field.[1] The language of Section 213(a)(1) and later Section 5(2)(b)[2] was general: it did not *define* how or in what manner motor carrier operations could be used to public advantage by a rail carrier in its operations, and there was no expressed prohibition against railroads or their affiliates engaging in motor carrier operations under new franchises or against acquiring control of motor carriers holding certificates or permits from the ICC. Wisely Congress left interpretation of this language to the ICC, recognizing that the Commission as the experienced regulator was in the best position to adapt Congress's general policy

[1] See: Hearings on H.R. 5262 And H.R. 6016 Before A Subcommittee Of The House Committee On Interstate And Foreign Commerce, 74th Cong., 1st Sess. (1935); House Committee Report No. 1645, 74th Cong., 1st Sess (1935); Report No. 482 to Accompany S. 1629, 74th Cong., 1st Sess. (1935); 79 Cong. Rec. 5877 (1935); 79 Cong. Rec. 12206 (1935).

[2] Section 213(a)(1) of the "Motor Carrier Act, 1935" was slightly modified in a manner not here pertinent by the "Transportation Act of 1940" and redesignated Section 5(2)(b).

regarding railroad use of motor carriage to changing conditions in transportation.

Congressional policy regarding railroad entry into the motor carrier field comes into play in proceedings under Section 5(2)(b) where control of an independent motor carrier is involved or under the licensing provisions of Sections 207 and 209 where new authority is sought by a railroad or its affiliate. Initially the Commission's policy was to approve those Section 5 acquisitions where the motor carrier service was closely tied to the rail operations; that is, where the motor carriers were "auxiliary to and supplemental of" rail operations. See, *Pennsylvania Truck Lines, Inc.—Control—Barker,* 1 M.C.C. 101 (1936), 5 M.C.C. 9 (1937); *Kansas City S. Transport Co., Inc., Com. Car. Application,* 10 M.C.C. 221 (1938), 28 M.C.C. 5 (1941). The Commission followed this policy until 1945 when it began to change. In *Rock Island Motor Transit Co.—Purchase—White Line M. Frt.,* 40 M.C.C. 457 (1946), 55 M.C.C. 567 (1949), a wholly owned subsidiary of the Chicago, Rock Island and Pacific Railroad sought authority under Section 5(2)(b) to acquire certain unrestricted motor carrier authority. In approving the acquisition, the Commission imposed restrictions, including one requiring that the service be "auxiliary or supplemental" to rail service. The Supreme Court acquiesced to this action in *United States* v. *Rock Island Motor Transit Co.,* 340 U.S. 419 (1951). Thereafter, the rail subsidiary filed a Section 207 application for a certificate authorizing unrestricted operations. In a report by the entire Commission, unrestricted motor carrier rights were granted in *Rock Island Motor Transit Co., Com. Car. Application,* 63 M.C.C. 91 (1954),

the Commission stating that it "may issue certificates to motor-carrier affiliates of railroads with or without restrictions as the circumstances may require." (63 M.C.C. at 101) This Court approved the "special circumstances" exception in the Section 207 context in *American Trucking Assos.* v. *United States,* 355 U.S. 141 (1957). Three years later, in *American Trucking Assos.* v. *United States,* 364 U.S. 1, 10-11 (1960), this Court again held that the requirements of Section 5(2)(b) do not prevent the Commission from granting unrestricted motor carrier authority to a railroad when in the public interest:

> "[W]hile the judicial and administrative current has run strongly in favor of auxiliary and supplemental restrictions on motor carrier subsidiaries of railroads, the Commission has determined, and this Court has agreed, that the public interest may sometimes be promoted by not imposing such limitations."

The Commission has frequently issued certificates to railroad subsidiaries in Section 207 applications without restrictions where "special circumstances" were found to exist; that is, where unrestricted operations by the rail-owned carrier were found on specific facts and circumstances to be in the public interest. Appellant concedes that the Commission may in "special circumstances" issue unrestricted motor carrier rights to a railroad affiliate under Section 207, but contends that the ICC is powerless to approve an acquisition under Section 5(2)(b) functionally unrestricted to the rail operation of the parent. (J.S. 7, 10-11)

Application of a "special circumstances" exception in a Section 5(2)(b) acquisition proceeding has not previously been subject to judicial review. However,

the Commission has consistently stated that it need not impose "auxiliary and supplemental" restrictions on motor carrier operations in a Section 5 transaction where an unrestricted grant of authority is warranted by the facts and the standard of Section 5(2)(b) is otherwise satisfied. See, *Canadian Nat'l. Trans.—Investigation of Control,* 109 M.C.C. 392 (1970); *Burlington Truck Lines, Inc.—Purchase—Pirnie,* 85 M.C.C. 363 (1960).[3]

Appellant attempts to dismiss past ICC grants of unrestricted motor carrier authority in Section 5 proceedings as unlawful departures from Congressional policy and therefore no precedent for the action under review. However, as the District Court pointed out (J.S. 7a-8a), it is well settled that the construction given to a statute by the administrative agency charged with the duty to carry out its enforcement is entitled to great weight and is not to be overruled unless clearly wrong. *Perkins* v. *Matthews,* 400 U.S. 379 (1971); *Investment Co. Institute* v. *Camp,* 401 U.S. 617 (1971); *Billings* v. *Truesdell,* 321 U.S. 542 (1944); *Gray* v. *Powell,* 314 U.S. 402 (1941). This limitation on the

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[3] These Section 5 cases were also mentioned by the Commission in the *Burlington* decision as other instances where no auxiliary and supplemental limitations were imposed: *ET & WNC Transp. Co.—Purchase—Huckabee,* 56 M.C.C. 50 (1949); *ET & WNC Transp. Co.—Control—Inter City Trucking Co.,* 65 M.C.C. 390 (1955); *Louisville, N.A. & C.R. Co.—Purchase—Meerman,* 45 M.C.C. 6 (1946); *Pacific Motor Trucking Co.—Pur.—Lowinel Trucking Co.,* 60 M.C.C. 373 (1954); *Burlington Truck Lines, Inc.—Purchase—Coffey,* 70 M.C.C. 385 (1957); *Santa Fe Trail Transp. Co.—Purchase—Brooks and Pitts,* 70 M.C.C. 725 (1957); *Burlington Truck Lines, Inc.—Purchase—Love,* 75 M.C.C. 258 (1958); *Santa Fe Trail Transp. Co.—Purchase—Lang and Givens,* 70 M.C.C. 773 (1957), 75 M.C.C. 385 (1958); *Burlington Truck Lines, Inc.—Purchase—Hobby,* 75 M.C.C. 322 (1958).

court's power of review has also been applied to many decisions involving the ICC's interpretation of the Interstate Commerce Act. See, *United States* v. *American Trucking Assos.*, 310 U.S. 534 (1940); *Chicago St. P.M.&O. Ry. Co.* v. *United States*, 50 F. Supp. 249 (D. Minn. 1943), aff'd, 322 U.S. 1 (1944); *I.C.C.* v. *Allen & Kroblin, Inc.*, 212 F. 2d 555 (8th Cir., 1954), cert. denied, 348 U.S. 831 (1954). (J.S. 8a) Moreover, a consistent and long standing interpretation of a statute is entitled to special consideration, and here the Commission has held for over 30 years that Section 5(2)(b) permits the grant of unrestricted rights when "special circumstances" warrant it. *Cf. Dismuke* v. *United States*, 297 U.S. 167 (1936); *Alaska S.S. Co.* v. *United States*, 290 U.S. 256 (1933).

Appellant claims that this Court in the two *Rock Island* cases first recognized and endorsed the "auxiliary and supplemental" standard both for acquisitions under Section 5 and for applications for new authority under Section 207 and then qualified the standard as "mandatory" in Section 5 proceedings and permissive in Section 207 proceedings. (J.S. 11) The first *Rock Island* case (340 U.S. 419 (1951)), as indicated previously, affirmed the propriety of the Commission's action in imposing "auxiliary and supplemental" restrictions. There is no language in that decision that supports appellant's proposition that such restrictions are mandatory in a Section 5 case. The second *Rock Island* case (355 U.S. 141 (1957)), affirmed the grant of unrestricted rights to the same carrier in a Section 207 proceeding, and again this Court did not state that "auxiliary and supplemental" restrictions are mandatory in Section 5 cases. That this Court has not so held is manifest in view of its statement in *American Trucking Associations* v. *Frisco Transp. Co.*, 358 U.S. 133 (1958), a year after the second *Rock Island* case. In the *Frisco* case, authority was issued in a Section 5 proceeding without "auxiliary and supplemental" restrictions. The omission was an inadvertent clerical error. Before this Court, appellant argued that the Commission was without power to issue unrestricted certificates under Section 5(2)(b). In a footnote to its decision, this Court responded to that contention (358 U.S. 141, fn. 5):

> "We have not had occasion to rule definitely whether that Section states rigid requirements that operations of rail-affiliated motor carriers be auxiliary or supplementary to train service. Cf. *American Trucking Assns.* v. *United States*, 355 U.S. 141, 2 L ed 2d 158, 78 S Ct 165. As resolution of the question is unnecessary for the present decision, we intimate no position with regard to it."

Considering the foregoing, it is submitted that the District Court correctly found that the ICC has the power under Section 5(2)(b) to grant unrestricted operating rights to a railroad or its affiliate where "special circumstances" exist and where the transaction is otherwise consistent with the public interest provisions of that section. Despite appellant's claim otherwise, no impediment exists either in the language of the statute or relevant case law to preclude such a grant of authority. Considering the Commission's long and unchallenged interpretation of its power under Section 5(2)(b) to issue unrestricted rights in unusual circumstances, strong precedent exists for not disturbing the lower court's decision.

2. Contrary to appellant's claim, the District Court properly found that the acquisition is consistent with the proviso of Section 5(2)(b) and that the ICC's

finding in this regard is supported by substantial evidence.

The transaction clearly satisfies the three-pronged test of Section 5(2)(b). As to the first standard, the transaction is manifestly in the public interest since common control and operation of Smith (U.S.) and Smith (Canada)[4] will permit the two carriers to operate as a single integrated system on international traffic between the United States and Canada resulting in operating economies and efficiencies and safer service to the ultimate benefit of the shipping and receiving public.[5] The ALJ had no difficulty in finding that the record demonstrated that the "public interest requires the proposed transaction" (J.S. 49a-50a); the Commission had no doubts about affirming his finding (J.S. 12a-13a); and the lower court found their findings and conclusions fully supported by the evidence. (J.S. 8a-10a)

As it did before the District Court, appellant argues principally that the Commission cannot find that the motor carrier service will be used "to public advantage in its operation," as required by the second test of Section 5(2)(b), because the Canadian Pacific has no tracks in the territory served by Smith (U.S.). (J.S. 17-18) Appellant claims that the *Burlington* and *Canadian Natl.* cases, *supra,* relied upon by the Commission and the court as precedent, are themselves sig-

[4] As indicated in the ALJ's Initial Decision (J.S. 22a-24a), Smith (Canada) is the Canadian counterpart of Smith (U.S.) and is also controlled by Smithsons Holdings and in turn the Canadian Pacific. The two operations were at one time a single motor carrier service and have been operated separately or jointly at one time or another for almost 30 years.

[5] For a detailed discussion of the specific benefits accruing to the public, see pages 29a-31a of the Jurisdictional Statement.

nificant departures from the required statutory finding and factually distinguishable from this proceeding. In the *Burlington* case, appellant states the Commission was able to conclude that "[t]he record contains abundant unrefuted evidence establishing that this transaction will enable the railroad to use service by motor vehicle to public advantage in its operations within the meaning of the statute, to the extent the regular-route operating rights authorize service at points which are stations on the railroad." (85 M.C.C. at 367) No such finding, states appellant, can be made in this proceeding. (J.S. 19)

As indicated in the ALJ's Initial Decision, elimination of rail less carload (LCL)[6] service by United States railroads generally, and the New York Central in particular, prevented Canadian Pacific from effectively handling LCL traffic between Canada and the New York-New Jersey area served by Smith (U.S.).[7]

[6] LCL refers to shipments of small quantities—up to 10,000 pounds—by railroads.

[7] Withdrawal of the New York Central from handling LCL traffic had a dramatic impact upon the international operations of Canadian Pacific between Canada and the United States. Revenue freight of Canadian Pacific and Canadian National, the only two Canadian railroads, destined to Ontario from United States points dropped from 141,706 tons in 1950 to 5,945 tons in 1969; and in the reverse direction from 334,905 tons to 11,166. Revenue freight between Quebec and United States points dropped from 126,999 tons in 1950 to 3,334 tons in 1969. (Exh. 23, App. A) Tons of LCL freight originated and delivered to other railroads by New York Central declined from 596,459 tons in 1950 to 1,369 tons by 1967, or almost 100 percent. LCL tons received from connecting lines and terminated on the lines of New York Central decreased from 389,722 tons in 1950 to 1,673 tons in 1967, again almost 100 percent. Total LCL tons transported by the railroad declined from 1,593,445 in 1950 to 4,404 by 1967. (Exh. 20, Table B) (J.S. 37a-38a, 50a)

Acquisition of control of Smith (U.S.) will permit the Canadian Pacific to continue its participation in LCL type traffic between Canadian points and the territory served by Smith (U.S.), with the Smith (U.S.) service replacing the former operation of the New York Central. Approval of this transaction will, therefore, permit the Canadian Pacific to use the service of Smith (U.S.) to public advantage in its rail operation. As the ALJ found (J.S. 50a):

> "Although Canadian Pacific must by law continue to provide LCL service in its Canadian operation and we have no jurisdiction over this portion of its operation, it cannot be overlooked that the motor carrier service in the United States is part of substituted motor-for-rail operations in the movement of small shipments between the two countries and therefore to public advantage in rail service, to say nothing of the increased advantage to the shipping public in efficiencies of movement of shipments, tracing of shipments, speed of delivery, etc. It is therefore clearly in the public interest to approve the application without restrictions."

Apart from clarifying the ALJ's misuse of the term "substituted motor-for-rail service,"[8] Division 3 adopted his conclusion (J.S. 12a-13a), and the entire Commission affirmed the findings and conclusions of Division 3. And the lower court, after reviewing the

[8] "Substituted motor-for-rail" operations refer to a motor carrier service actually substituted for existing rail service and such proceedings arise under Section 207, not Section 5. Such operations are approved principally on the basis of anticipated operating economies and efficiencies. *See, Santa Fe Trail Transp. Co. Ext.—Pampa, Tex.*, 79 M.C.C. 300 (1959); *Black Diamond Transport Co. Com. Car. Application*, 83 M.C.C. 163 (1960).

record and hearing oral argument on the issue, concluded (J.S. 10a):

> "An analysis of the detailed decision of the ALJ establishes that the 'public advantage in its operations' test was carefully considered and applied to the evidence of record. Likewise, the Commission considered both the change in the railroad's position caused by the decline of LCL train service in the United States and the testimony of the applicant's traffic consultant prior to adopting the ALJ's recommendation. The evidence submitted to the Commission clearly supports the Commission's finding that Canadian Pacific will be able to use the services of Smith Transport (U.S.) to public advantage in its operations."

There is no requirement in Section 5(2)(b), its legislative history, or the controlling case law to support appellant's proposition that a grant of motor carrier authority to a railroad, or a railroad affiliate, must be restricted to service at points which are rail stations. (J.S. 18-19) On numerous occasions, the Commission has granted motor carrier authority to railroad affiliates to serve points or territories beyond the railroad parent's line, including authority to serve rail stations of other railroads. See e.g., *Propane Transport, Inc. —Purchase—Propane Transport,* 109 M.C.C. 384 (1970); *Great Northern Ry. Co.—Control—Superior & D. Transfer,* 85 M.C.C. 401 (1960); *Burlington Truck Lines, Inc.—Purchase—Hobby, supra; Santa Fe Trail Transp. Co.—Purchase—Brooks & Pitts, supra.* Significantly, in the *Burlington* case cited by appellant (85 M.C.C. 363; J.S. 19), the Commission also granted authority to serve points which were not rail stations and others which were rail stations of another railroad. That the facts of the *Burlington*

and *Canadian Natl.* cases may not be on all fours with those in this case is not significant. They are precedent for the principle that under proper circumstances unrestricted rights may be granted in conformity with the proviso requirements of Section 5(2)(b).

The third requirement of Section 5(2)(b) is not seriously contested by appellant since approval of the transaction will plainly "not unduly restrain competition." Operation of Smith (U.S.) and Smith (Canada) as a fully integrated motor carrier service is nothing more than the continuation of a service that has been in existence, as a single operation or separately managed but closely coordinated motor carrier operation, for almost thirty years. Competing carriers in the United States and Canada have long since adjusted to such service. Cf. *Jefferson Lines—Purchase—Jefferson Trans.*, 104 M.C.C. 497 (1968). Moreover, the most significant indication that approval of this transaction will not, and has not, unduly restrained competition is the absence of active, substantial motor carrier participation in the last hearing before the Commission, and the failure of any independent motor carriers to join in the suit before the District Court. Appellant, a trade association made up of affiliated State trucking associations, cannot claim to be injured in any way by the ICC's approval of this transaction since it operates no motor vehicles and transports no freight. In other words, we have a trade association unable to show any potential personal injury opposing an ICC decision in a proceeding where the motor carriers had at best limited interest and have long abandoned any active role in the case. Appellant's claimed undue restraint on competition is obviously baseless.

3. The Commission found that "special circumstances" justifying a grant of functionally unrestricted authority exist in this proceeding because of the continuing responsibility of Canadian Pacific to transport LCL traffic and the absence of rail outlets for such traffic in the area served by Smith (U.S.), coupled with the fact that approval of the transaction would be to the public advantage and in no way would unduly restrain competition. Despite appellant's contrary position, what constitutes "special circumstances," as the District Court pointed out, is dependent upon the facts of each individual case,[9] and the unusual facts of this proceeding warrant the result reached. The District Court also properly found that the Commission's decision and order was within the ICC's statutory power and based upon appropriate findings supported by substantial evidence within the rule of *Illinois C. R. Co.* v. *Norfolk & W. R. Co.*, 385 U.S. 57 (1966). (J.S. 9a) Appellant has failed to raise any reasons to disturb this finding.

4. As the District Court pointed out (J.S. 5a), the crux of this controversy is the Commission's implementation of the proviso of Section 5(2)(b) to meet changing conditions in the transportation industry. Appellant reads the underlying Congressional policy as if frozen in time and treats the transportation industry as it existed in the 1930's and early 1940's. In

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[9] *Cf. Rio Grande Motor Way, Inc.—Control and Merger*, 87 M.C.C. 479 (1961); *Rock Island Motor Transit Co., Extension—Oakbrook, Ill.*, 91 M.C.C. 161 (1962); aff'd sub nom. *American Trucking Association* v. *United States*, 260 F. Supp. 386 (D.C. D.C. 1966), aff'd per curiam, 387 U.S. 93 (1967); *Santa Fe Trail Trans. Co., Ext.—Colo. & Kans. Points*, 111 M.C.C. 224 (1970); *Pacific Transportation, Extension—Elimination of Restrictions*, 117 M.C.C. 224 (1972), aff'd sub nom. *American Trucking Association, Inc.* v. *United States*, 373 F. Supp. 252 (W.D. Tex. 1973).

contrast, the Commission reads the proviso as permitting it to adapt regulatory policy to changing transportation requirements. Thus, while it may have been appropriate to curtail railroad entry into the motor carrier field in the early days of regulation, such a policy is no longer necessary since motor carriers, not railroads, are the dominant mode. Previously, appellees traced the ICC and court decisions giving rise to the modification of this regulatory policy, and it was shown that this Court has approved the principle that the Commission does not act beyond its statutory authority when, occasionally in the public interest, it grants motor carrier rights in Section 207 proceedings to a railroad without auxiliary or supplemental restrictions. (See, *American Trucking Assos.* v. *United States,* 355 U.S at 151-152) It naturally follows that if the Commission has the power to issue unrestricted rights under Section 207, it also has the same power under Section 5(2)(b) since Congressional policy regarding railroad entry into the motor carrier field is obviously the same whether viewed from the standpoint of a new application for authority or the purchase of existing rights. In substance, then, appellees submit that appellant is arguing not an issue of law, but its interpretation of what facts it deems appropriate to establish "special circumstances" justifying a grant of unrestricted motor carrier authority. But the ICC, not the appellant, is the regulatory expert charged with the responsibility of enforcing the Act and evaluating the evidence, and the District Court has held that its finding of "special circumstances" in this proceeding is adequately supported by the evidence of record. It is pointed out further that the Commission's decision here does not abrogate Congressional policy regarding rail entry into the motor carrier field; the proviso of Section 5(2)(b) must still

be accommodated in all future rail acquisitions of motor carrier rights. In this instance, there were exceptional circumstances justifying approval of the transaction.

It is submitted, therefore, that the Commission's decision will have no significant impact upon the transportation industry so as to require this Court's plenary review.

CONCLUSION

For the reasons stated, the judgment of the District Court should be affirmed.

Respectfully submitted,

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Dated: March 16, 1976

Certificate of Service

I, Harry J. Jordan, one of the attorneys for appellees herein, and a member of the bar of the Supreme Court of the United States, hereby certify that, on the 16th day of March, 1976, copies of the foregoing document, in duly-addressed envelopes, with postage prepaid, were served upon the following parties:

1. The Honorable Robert H. Bork, Solicitor General, Thomas E. Kauper, Asst. Attorney General, and John Osborn, Attorney, Department of Justice, Washington, D. C. 20530.

2. Arthur J. Cerra, General Counsel, and Kenneth G. Caplan, Attorney, Interstate Commerce Commission, Washington, D. C. 20423.

3. Peter T. Beardsley, Robert L. James, Todd A. Peterman, and Nelson J. Cooney, Attorneys, 1616 P Street, N.W., Washington, D. C., Counsel for Appellant.

HARRY J. JORDAN